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**From:** Wu, Jennifer [Wu.Jennifer@epa.gov]  
**Sent:** 2/1/2019 6:36:50 PM  
**To:** Opalski, Dan [Opalski.Dan@epa.gov]; Lidgard, Michael [Lidgard.Michael@epa.gov]  
**Subject:** Re: Talking points/Background for Anna Wildeman conversation on WA hydro permits

Good point, Dan. The 401 cert process in Washington for NPDES permits seems to be different every time, and this being the first time (that I'm aware of) that there was a public notice made it so that we couldn't anticipate what this would look like.

A couple of other things, I talked with Yakama Nation this morning about rescheduling the discussion with you and Chris H with Yakama Tribal Council - we're going to be looking at April 2. He suggested not meeting with Tribal Council until we are out for public comment, which makes sense to me.

Lastly, two more requests for the permits came in today: Upper Columbia River United Tribes (UCUT - tribal consortia) and Chelan PUD.

Feel free to let me know if you have reached a conclusion with EPA HQ not to release the pre-draft permits with explanations per the talking points, and I'll let the requestors know. Otherwise, we can connect on Monday.

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**From:** Opalski, Dan  
**Sent:** Friday, February 1, 2019 8:10:42 AM  
**To:** Lidgard, Michael; Wu, Jennifer  
**Subject:** RE: Talking points/Background for Anna Wildeman conversation on WA hydro permits

Thanks for putting this together, Jenny.

A point of context I would add is that we are not recalling Ecology previously public noticing our requests for certifications, so the idea of a pre-draft being "more public" in this way is new for us, and not something we would have anticipated given long-standing practice and experience.

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**From:** Lidgard, Michael  
**Sent:** Friday, February 1, 2019 8:00 AM  
**To:** Wu, Jennifer <Wu.Jennifer@epa.gov>; Opalski, Dan <Opalski.Dan@epa.gov>  
**Subject:** RE: Talking points/Background for Anna Wildeman conversation on WA hydro permits

Jenny, Thanks for this summary. The background helps to remind me how we were operating in light of the deadlines established by the pending permit initiative and the timing for when HQ gave us additional direction on 316b – and our subsequent reaction. I also agree with your bullet point recommendation on how to proceed re requests for draft permits. Very helpful. - Mike

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**From:** Wu, Jennifer  
**Sent:** Friday, February 1, 2019 12:09 AM  
**To:** Opalski, Dan <Opalski.Dan@epa.gov>  
**Cc:** Lidgard, Michael <Lidgard.Michael@epa.gov>  
**Subject:** Talking points/Background for Anna Wildeman conversation on WA hydro permits

Hi Dan, here are a few bullet points for your talk with Anna Wildeman. There are some background bullets which you probably already know but might be helpful for context.

## **Background**

- There are 9 Washington federal dams that are part of the permit backlog.
- To meet the permit backlog priority and have a final permit issued by November 2018, we worked quickly to complete pre-draft permits and begin the 401 certification and tribal consultation processes. These along with ESA consultation can often present obstacles to being able to complete permits in a timely manner.
- On September 19, 2018, we requested a draft 401 cert for 4 Lower Columbia River dams from Ecology. On September 20, 2018, we requested draft 401 certs for 4 Lower Snake River dams from Ecology. On October 1, 2018, we notified Oregon DEQ that they had 60 days to respond as part of 401(a)(2) (affected downstream state). On October 1, 2018, we also initiated tribal consultation for 9 tribes who indicated interest in the Columbia and Snake Rivers. On October 4, 2018, we requested a draft 401 cert from Ecology and from Colville Tribes on the Grand Coulee permit. Per our procedures, we included pre-draft permits and draft Fact Sheets to 401 certifying authorities and tribes.
- As we were waiting for responses on the 401 certs and tribal consultation, we continued to work closely with the Corps and BOR to develop the permits and fact sheets.
- On October 23, 2018, EPA HQ directed us to cease releasing documents that had 316(b) language and to not discuss or have written communications on 316(b) outside the agency. We immediately stopped and have shared no information, not released new versions of pre-draft permits or fact sheets, and have had no emails or correspondence on 316(b) except when asked by BOR or Corps on the status of EPA HQ's decision on 316(b).

## **Current Status**

- We have been working closely with the Corps and BOR to learn more about dam operations, keep them up to date on progress and milestones, and notify them of general contents of what we expect to be in the permits as they prepare to implement them. We have a strong working relationship with them.
- We have also been working closely with the state and tribes to identify potential concerns and resolve them. This is also to help keep the process smooth to allow us to go out for public comment and ultimately issue final permits, per the permit backlog priority.
- We have worked closely with Ecology throughout the 401 cert development. However, because of the shutdown, we did not know they were intending to issue a draft 401 certification nor that they were going to issue a public notice of our request to them for a 401 cert on the dams until the first day when the government was reopened on Monday, 1/28/19. If there hadn't been a shutdown, we would likely have worked closely with them and been able to review their public notice. We did not have that opportunity, nor did we anticipate that Ecology's public notice would imply that "draft permits" were available to be reviewed by the public.
- The public notice contains three misleading parts that could confuse the public.
  - First, it implies that we requested a draft 401 certification in December 2018. We did not. We requested the draft 401 certification in September and that is the version Ecology has under consideration. We have not sent them any new pre-draft permits for review. They have the September/early October versions which were all prior to HQ's request that we not release any information with 316(b).
  - Second, it refers to "draft permits" that are available. There are no public draft permits available. There are only pre-draft permits that we have sent to Ecology, Oregon, and Tribes for their 401 cert/tribal consultation. We would like to go out with a public comment draft in March, pending EPA HQ's decision on 316(b).
  - Third, it implies that there is a 401 certification and "draft permits" available for public comment. There are none. The public comment is for Ecology's receipt of EPA's request for a 4001 certification on the permits. The types of comments Ecology may receive are what they should consider adding in their 401 certifications.

## **Potential Approaches to Move Forward**

- Following Ecology's public notice on Wednesday, 1/30/19, we have so far received 7 requests for the pre-draft permits: BOR, Corps, BPA, Avista, a law firm likely representing industry interests, Center for Environmental Law and Policy, and Washington State University (they are more interested in the TMDL model). We have not released any documents.
- Our recommendation is that:

- We inform any requestors that the public comment drafts of the permits aren't available;
- Clarify that Ecology's public notice actually refers to pre-public draft permits;
- State that we are still working on the permits to incorporate information on dam operations and the anticipated 401 certifications; and
- that we intend to come out with public comment drafts of the permits in March and can notify them as soon as they come out.
- We can also offer to answer any general questions they have on the permits re pollutants and operations being addressed and point them to the Idaho GP hydro permit.
- We can also provide Anna Wildeman and others at EPA HQ a briefing/short overview of the permits and answer any questions on how we have developed the permit requirements and/or worked with the Corps, BOR, tribes, and states. (Kevin Weiss had indicated in December that Anna was interested in a briefing.) Our approach with all parties is frequent communication, no surprises, and transparency for defensible and practicable permits (except for discussions on 316(b) which we stopped on October 23).
- Getting resolution on 316(b) is essential to move forward with the public comment draft permits quickly and eliminate the need to reply to FOIA requests where we would likely need to release pre-draft permits. We are ready to take out 316(b) language if that is EPA HQ's determination.
- Withdrawing the 401 certification requests would not prevent external stakeholders from getting copies of the pre-draft permits, since they would still be subject to FOIA. The quickest way to reduce confusion is for EPA to go out for public comment with EPA HQ's determination on 316(b) incorporated.

Dan and Mike, I'm working from home tomorrow periodically, but out much of the day. I'm happy to provide whatever information or materials that will help out. Thanks to both of you for the great management support on these permits – I appreciate it.

Jenny Wu  
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 EPA Region 10  
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